

Michael Boots
Acting Director
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20503

Dear Acting Director Boots:

Pursuant to the responsibilities of the Administrator of the Environmental Protection Agency under Section 309(b) of the Clean Air Act, I am referring to the Council on Environmental Quality the proposal by the Department of Agriculture's U.S. Forest Service to issue a Plan of Operations to Rosemont Copper Company for the Rosemont Copper Mine, Pima County, Arizona.

Section 309(b) of the Clean Air Act requires that the Administrator refer to the Council any matter pertaining to her duties and responsibilities that she determines to be "unsatisfactory from the standpoint of public health, welfare or environmental quality...." The Council's regulations recognize EPA's distinct referral authority under Section 309 (40 CFR 1504.1(b)).

The preferred action identified in the Final Environmental Impact Statement and draft Record of Decision would authorize the construction, operation and closure of the Rosemont Copper Mine "Barrel Alternative", with associated infrastructure on approximately 3,655 acres of National Forest System land, 1,200 acres of private land owned by Rosemont Copper, and 575 acres of Arizona State Land Department land. The project includes an open pit mine, waste rock disposal areas, ore processing facilities, tailings storage facilities, a water and electrical transmission corridor, and additional infrastructure and ancillary facilities

The proposed project and all action alternatives identified in the NEPA process would result in the fragmentation of a vast, largely intact, hydrologic landscape composed of hundreds of drainages covering many linear miles. The extraction of groundwater for pit dewatering would result in watershed-scale impacts to aquatic resources; including the degradation and likely destruction of regionally rare and ecologically invaluable perennial streams. To date, sufficient mitigation has not been proposed for these impacts, nor has data been presented to suggest that adequate mitigation is available for offsetting either the direct or indirect impacts to surface water resources from the project. Finally, the project poses a risk to surface water quality--- Given the magnitude and duration of the potential impacts of this proposed project, we believe it is environmentally unacceptable.

EPA has determined that the preferred project alternative does not comply with the Clean Water Act Section 404, Clean Water Act Section 401, and violates the Federal government's tribal trust responsibilities. I also believe the proposed project does not meet the intent of the National Environmental Policy Act Section 101(a) to promote the Federal government's use of all practicable means and measures to foster and promote the general welfare, and fulfill the social, economic, and other requirements of present and future generations of Americans.

EPA has visited the project site and worked diligently with Forest Service and Corps management and staff to better understand the approach and assumptions employed. I believe it is important for you to understand that EPA has spent considerable time and effort to resolve our issues with the Forest Service, and I regret that we have not been able to reach a resolution.

The enclosures to this letter include a copy of my letter to the Secretary of Agriculture informing him of my referral of this matter (Enclosure 1), and a discussion of the issues that CEQ's regulations require at 40 CFR 1504.3(c)(2) (Enclosure 2). My letter to the Secretary requests that he take no action that will lead to issuance of the Rosemont Copper Mine Plan of Operations until the Council acts upon this referral.

I look forward to resolving this issue in an expeditious manner. If we can provide any additional information, please call me, or Jared Blumenfeld, Region 9 Regional Administrator.

Sincerely,

Gina McCarthy
Administrator

Enclosures:

- (1) Letter to Secretary of Agriculture informing him of this referral
- (2) Detailed comments supporting EPA's "Unsatisfactory" conclusion with attachments
 - Attachment A: Site Map
 - Attachment B:.....
 - Attachment C:.....
 - Attachment D:.....